

The new Companies (Shareholders' Rights) Regulations 2009

“...nothing precludes the holding and conducting of general meetings by electronic means...”

Paul Forsyth
Assistant solicitor
020 8221 8041
paul.forsyth@bowlinglaw.co.uk

Introduction

On August 3, 2009 further changes to the Companies Act 2006 (the 2006 Act) came into force, in relation to company resolutions and meetings, as a result of the Companies (Shareholder's Rights) Regulations 2009 (the Regulations).

Background

The Regulations intend to improve corporate governance by ensuring that shareholders in EU companies with shares traded on a regulated market are able to exercise their voting rights. The Regulations set minimum standards for traded companies in connection with notices of meetings and documents available before meetings, shareholders' rights to add items to the agenda, to ask questions and vote at meetings. Some of the changes will apply to all UK companies, whether traded or not and the key changes to consider are noted below.

Overview of the key changes

The Regulations make a number of changes to the 2006 Act. This note outlines the most important of these that apply to all companies. The changes apply in relation to company meetings of which notice is given, or first given, on or after August 3, 2009.

- Shareholders with 5 per cent or more of the voting rights can require the directors to call a general meeting. Previously a shareholding of 10 per cent was required.
- Corporate representatives can vote in different ways from one another in respect of different blocks of shares owned by the same shareholder. The amendments change the current provisions in the 2006 Act and remove the requirement for the 'designated corporate representative' method of voting at meetings.
- Electronic meetings and voting are expressly permitted. From August 3, 2009 nothing precludes the holding and conducting of general meetings by electronic means.
- The 2006 Act has been clarified to provide that proxies must "vote" (changed from 'act') in accordance with any instructions given by the person who appointed them (although the company is not required to ensure that this is the case). The amendment has been made to ensure compliance with the Regulations.
- The 2006 Act now provides that a company's articles can provide for votes to be cast in advance of a meeting. The amendment has been made to ensure compliance with the Directive.

continued

The new Companies (Shareholders' Rights) Regulations 2009 (continued)

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- It is unlikely that the option above will be implemented by many companies due to the system of proxy appointments for UK companies.

Although the 2006 Act is already broadly compliant, companies should be aware of the new provisions in relation to resolutions and meetings brought about by the Regulations.

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Assistant solicitor
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paul.forsyth@bowlinglaw.co.uk

For more information contact Paul Forsyth on 020 8221 8041 or email him at :
paul.forsyth@bowlinglaw.co.uk